

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

August 7, 2019

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Transfer of All Reserved Housing Units to Revocable Trusts and Defer the Payment of Shared Equity and the HCDA's First Option to Purchase the Unit, Provided Certain Conditions are Met?

SUMMARY:

The Authority previously authorized a Reserved Housing unit owner at Rycroft Terrace to transfer their unit into a revocable trust, conditioned upon the execution of a new unilateral agreement reinstating the Hawaii Community Development Authority's (HCDA) reserved housing requirements and a provision that allowed the HCDA to review the trust documents. The subject request is for a blanket approval for other reserved housing unit owners who would like to transfer their units to revocable trusts. Such an approval would expedite processing for future requests.

AUTHORITIES:

HCDA Reserved Housing is governed by Hawaii Administrative Rules (HAR) § 15-22 (2005 Rules), HAR § 15-218 (2011 and 2018 Rules). Under all versions of the rules, transfer to revocable trusts are subject to board approval and discretion.

Under the 2005 Rules (HAR §15-22):

Transferring title of a reserved housing unit to a trust during the regulated term is governed by HAR § 15-22-186, the relevant section of which is referenced below:

- (c) The conditions for transferring reserved housing units during the regulated term are as follows:
- (1) If an owner wishes to transfer title, the authority or a governmental agency approved by the authority shall have the first option to purchase the unit...
 - (3) The owner shall notify the authority in writing of the intent to transfer title to the reserved housing unit and the property or the lease. The authority shall respond to the owner's notification by either waiving its option to purchase the unit, or by agreeing to buy the unit or providing a substitute buyer for the unit...

HAR § 15-22-188 allows for the deferral or waiver of certain conditions upon transfer of reserved housing, as cited below:

- (a) The conditions prescribed in § 15-22-186 pertaining to the payment to the authority of its share of the equity in the reserved housing unit shall be deferred by the executive director if the owner wishes to transfer title to the unit and the property or lease by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the authority.
- (b) Waivers may be granted by the authority on a case-by-case basis if any of the following are met:
 - (1) The waiver will not result in speculation;
 - (2) Where fiscal management will not allow repurchase of the unit; or
 - (3) Where such waiver will allow permanent financing by other mortgage lenders.

Under the 2011 Rules (HAR §15-218):

Sale or transfer of reserved housing units during the regulated term is governed by HAR § 15-218-37, which states:

- (1) The authority or an entity approved by the authority shall have the first option to purchase the unit...;
- (2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;
- (3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (a)(2) above. The authority may:
 - (A) Waive its option to purchase the unit,
 - (B) Agree to purchase the unit, or
 - (C) Designate another buyer for the unit..."

HAR § 15-218-42 allows the authority to consider deferring the equity sharing when the owner of a reserved housing unit wishes to transfer title to the unit by devise or through the laws of decent to a family member who would otherwise qualify for purchase of a reserved housing unit under Chapter 218.

The 2011 Rules are silent on whether the authority can grant waivers for certain conditions in the transfer of reserved housing. Both the 2005 and 2011 Rules are silent on transfers to revocable trusts.

Under the new 2018 Rules (HAR §15-218):

HAR §15-218-42 (5), the Authority may defer its first option to purchase and equity sharing when the unit is transferred into an inter vivos trust in which the purchasers remain the primary beneficiary and their rights of occupancy are not affected.

BACKGROUND:

At its January 9, 2019 meeting, the Authority deferred its first option to purchase and the payment of shared equity to allow the owner of Rycroft Terrace Unit 529 to transfer the unit to a revocable trust during the regulated term, subject to the following conditions:

1. A new unilateral declaration of restrictive covenants is executed;
2. The reserved housing requirements listed in HAR 15-22 are incorporated into a new deed; and
3. The new deed and trust documents are subject to review by the HCDA Executive Director to ensure they are sufficient.

At the time, the Authority was interested in how other state housing agencies handled similar requests. HCDA staff confirmed that another state agency, the Hawaii Housing Finance and Development Corporation (HHFDC), regards transfers to revocable trusts as “permitted transfers” and allows for administrative waivers of HHFDC’s first option to purchase and deferral of shared equity with the proper documentation. HHFDC also requires owner occupancy and stipulates that the primary beneficiary of the trust must remain living in the unit as their primary residence.

HHFDC requires that the revocable trust and new Deed documentation be provided for review to ensure the original Unit Deed encumbrances are referenced and that HHFDC’s first option to purchase is retained. The original restrictions are recorded in the new Deed under the original terms. For example, the Regulated Term expires 10 years after the original date of recordation. The term does not start over with the execution of a new Deed.

Like HHFDC’s requirements, HCDA Reserved Housing Requirements could be incorporated in the new Deed that would run with the property, as well as a new Unilateral Declaration. The owner occupancy requirement would apply to the original qualified program participant. The deed restriction contained in the trust would also ensure all other program elements such as regulated term, shared equity, and transfers remain intact.

ANALYSIS:

Under the 2011 Rules (HAR § 15-22-188), a waiver *may* be granted by the *authority* on a case-by-case basis, including transfers to revocable trusts that would not result in speculation. Such a waiver could be subject to a new unilateral agreement and deed restrictions which reinstate the regulated term and shared equity requirements.

Allowing transfers to revocable inter vivos trusts for Reserved Housing units governed by the 2005 and 2011 Reserved Housing Rules would be consistent with the 2018 Rules and would reduce confusion among Reserved Housing unit owners. Such consistency would also facilitate the eventual transfer of the Reserved Housing Program to another entity such as HHFDC, as the HHFDC already allows transfers to trusts for all units under their program.

The HCDA will continue to receive requests from Reserved Housing unit owners who are interested in transferring their units to revocable trusts as part of their estate planning. Without a

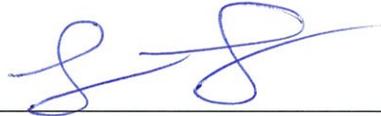
blanket approval, each request is treated on a case-by-case basis and will be brought to the Authority for action. By authorizing transfers to revocable trusts, HCDA staff can more expediently process such requests and reserve Authority action for those cases that fall outside of the scope of this approval.

RECOMMENDATION

HCDA staff recommends that the Board Authorize the Transfer of All Reserved Housing Units to Revocable Trusts and Defer the Payment of Shared Equity and the HCDA's First Option to Purchase the Unit, Provided the Following Conditions are Met:

1. A new unilateral agreement is executed between HCDA and the revocable trust reinstating HCDA's reserved housing requirements, including the regulated term; and
2. The new deed and trust documents shall be subject to review by the HCDA Executive Director to ensure all applicable provisions are met.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Aedward Los Banos, Executive Director